

part test for employment under Mass. Gen. Laws ch. 149, § 148B that Plaintiffs contend matters here—whether Plaintiffs were free from Big E’s control and direction. *Plaintiffs’ Motion* at 4. Plaintiffs are wrong on both counts.

This Court is no doubt capable of discerning whether the Crandall Report will help it decide the issues set out in Big E’s pending Motion for Summary Judgment. Moreover, this Court’s decision on summary judgment turns not solely on the question of whether Big E exercised the control and direction over Plaintiffs necessary to establish an employment relationship, but also on an analysis of § 148B’s third prong, which asks whether Plaintiffs were customarily engaged in an independently established business. The Crandall Report is relevant to the analysis of each factor, and Plaintiffs’ Motion should be denied.

ARGUMENT

This Court has wide discretion to determine whether expert testimony will help it assess the evidence or determine a fact in issue. *United States v. Seabagala*, 256 F.3d 59, 65-66 (1st Cir. 2001) (the trial court enjoys considerable latitude in determining whether expert testimony will or will not materially assist the fact finder). If there is any chance that the testimony will be beneficial to the trier of fact, the testimony should be admitted. *United States v. Archuleta*, 737 F.3d 1287, 1296-97 (10th Cir. 2013) (“helpfulness” requirement is satisfied “where expert testimony advances the trier of fact’s understanding to any degree”).

Plaintiffs fail to point to a single defect in the Crandall Report that can serve as grounds to exclude it from evidence. Indeed, Plaintiffs do not question the foundation or reliability of the report or Mr. Crandall’s qualifications. Moreover, where the evidentiary gatekeeper and fact finder are the same, as here, a court may always admit evidence subject to its ability to later exclude or disregard the evidence. *Kan. City Southern Ry. Co. v. SNY Island Levee Drainage Dist.*, 831 F.3d 892, 900 (7th Cir. 2016) (“Where a trial judge conducts a bench trial, the judge

need not conduct a *Daubert* (or Rule 702) analysis before presentation of the evidence, even though he must determine admissibility at some point.”). In fact, in another case involving allegations of misclassification, the U.S. District Court for the Central District of California allowed a report and testimony by Mr. Crandall at a bench trial over the objection of the plaintiff. *Ruiz v. Affinity Logistics Corp.*, No. 05-cv-2215, 2009 WL 10664190, at *6 (C.D. Cal. Dec. 1, 2009) (“The Court finds that excluding the expert testimony at this point in the proceeding is unnecessary, especially considering this is a bench trial.”). Plaintiffs’ argument that the Crandall Report will overcomplicate the decision process for this Court rings hollow. This Court is well equipped to determine for itself whether the Crandall Report is helpful.

Not only does Plaintiffs’ argument shortchange this Court’s ability to discern the value of the Crandall Report for itself, it also ignores the reality that Big E’s Motion for Summary Judgment addresses *both* of the relevant prongs of Mass. Gen. Laws ch. 149, § 148B. By its motion, Big E placed at issue not only whether Plaintiffs were so controlled and directed by Big E as to compel a finding of an employment relationship, but also whether Plaintiffs were customarily engaged in an independently established business. The Crandall Report addresses, among other subjects, how Mr. Cook’s managerial decisions impacted GCC Moving, LLC’s profits, how Mr. Cook was able to—and did—expand his business by profiting from the work of others, and how GCC Moving’s operation compares to other businesses based on data compiled by the U.S. Census Bureau. The Crandall Report will therefore be helpful to this Court on both prongs of the Massachusetts Wage Act’s test for employment.

CONCLUSION

The Crandall Report does not unnecessarily complicate the issues presented by Big E’s Motion for Summary Judgment. In addition, the report is germane to both prongs of the test for

employment under Mass. Gen. Laws ch. 149, § 148B. Plaintiffs' Motion should be denied, and this Court should consider the Crandall Report to the extent it finds the information in it helpful.

Respectfully submitted,

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/s/ James T. Spolyar

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